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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 VICTOR L. GUMBS, *a single person*, and
KELLIE THORNE, *a single person*,

11 Plaintiffs,

12 v.

13 STATE FARM FIRE & CASUALTY
14 COMPANY, *a foreign insurance company*
15 *authorized to conduct business within the State of*
Washington,

16 Defendant.

CASE NO. C07-1514-JCC

ORDER

17 This matter comes before the Court on Defendant's Motion for Summary Judgment (Dkt. No.
18 12), Plaintiffs' Response (Dkt. No. 14), and Defendant's Reply (Dkt. No. 16). The Court has carefully
19 considered these papers, their supporting declarations and exhibits, and the balance of relevant materials
20 in the case file, and has determined that oral argument is not necessary. For the reasons explained below,
21 the Court hereby DENIES Defendant's motion and rules as follows.

22 **I. BACKGROUND**

23 On May 20, 2004, Defendant State Farm Fire & Casualty Company ("State Farm") issued
24 Plaintiffs Victor Gumbs and Kellie Thorne a homeowner's insurance policy for a residence located at
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1 2455 S. 116th Way in Seattle, Washington (“Seattle house”). (Policy (Dkt. No. 13-2 at 3).) The policy
2 covered the dwelling and personal property. (*Id.*) The policy application listed Gumbs’ social security
3 number (“SSN”) as xxx-xx-4270 (Policy App. (Dkt. No. 13-2 at 28).) When Plaintiffs completed their
4 application, they estimated the value of their personal tools at \$20,000, and their instruments, cameras
5 and sports equipment at \$6,000. (Thorne Dep. 26:23–28:14 (Dkt. No. 13-9 at 24).) Apparently, Plaintiffs
6 never received a copy of the policy from Defendant. (Thorne Dep. 39:21–40:8 (Dkt. No. 15 at 6).)

7 On August 9, 2004, Gumbs reported a burglary of his Seattle home to police. (Incident Report
8 (Dkt. No. 13-9 at 31).) Gumbs reported a forced entry through the front door, damage to the frame, and
9 theft of numerous tools and personal property. (*Id.*) He also took pictures depicting the damaged door
10 frame. (Damage Pictures (Dkt. No. 15 at 9–10).) On August 16, 2004, Gumbs reported the theft to State
11 Farm. (Gumbs’ 1st Stmt. (Dkt. No. 13-2 at 34).) Gumbs told State Farm that he had returned home
12 around 2:00 p.m. on August 9 to discover the front door pushed in and the door frame split. (*Id.* at 2.)
13 He noticed numerous items missing, including a laptop computer, tools, his keys and wallet, which
14 contained cash, gift cards, and credit cards. He also reported that he had cancelled his stolen credit cards
15 and had begun to compile a list of missing tools. (*Id.* at 2–5.) Gumbs confirmed that he and Throne lived
16 together at the Seattle house. (*Id.* at 1.)

17 A State Farm adjuster met with Gumbs to inspect the home on August 25, 2004. (Robinson Decl.
18 ¶ 3 (Dkt. No. 13-3 at 26).) After the inspection, the adjuster apparently expressed concerns about the
19 claim to State Farm, including that: Gumbs had provided a seven-page list of missing tools, Gumbs and
20 Thorne were new to State Farm, and Gumbs and Thorne were performing a remodel of the home while
21 reportedly living in the garage. (*Id.*) Two days later on August 27, the claim was assigned to claim
22 representative Kimberly Robinson in the Special Investigation Unit. (*Id.*) Robinson’s review of the file
23 determined that Gumbs appeared to have used multiple names and two different social security numbers.
24 Thereafter, Robinson decided to undertake a detailed investigation of the claim. (*Id.*)

25 On September 28, 2004, Robinson recorded a statement from Thorne. (Thorne Stmt. (Dkt. No.

1 13-4 at 6.) Thorne stated that she and Gumbs had been living at the Seattle house since the middle of
2 June, 2004, and had been sleeping in the garage on the date of the loss because of the renovation. (*Id.* at
3 8–10.) She said that before moving to Seattle, they had lived in Gumbs’ house located at 15108 NE
4 177th Drive in Woodinville, Washington (“Woodinville house”). (*Id.* at 2 & 42.)

5 Robinson then questioned Thorne about her specific activities during the day of the loss. Initially,
6 Thorne stated that she and Gumbs left the Seattle house together that morning, then she dropped Gumbs
7 off to get a ride with somebody else, and took a nap in her car until reporting to work at 2:30 p.m. (*Id.* at
8 8, 24–27.) Later in the same interview, Thorne offered that she wanted to change her statement. (*Id.* at
9 40.) She stated that after leaving the Seattle house that morning, they actually went to the Woodinville
10 house to get some sleep. (*Id.* at 40.) She explained that they had been working all weekend and all night
11 on the remodel and went to the Woodinville house to rest. (*Id.*) Thorne further explained that she did not
12 initially disclose their trip to the Woodinville house because she was concerned about coverage under the
13 policy if they were not living at the Seattle house every single day. (*Id.* at 41.) She stated that they lived
14 at the Seattle house “for the hours that most people live places.” (*Id.*) She also told State Farm that
15 Gumbs had previously filed a petition for bankruptcy, which was dismissed. (*Id.* at 42).

16 State Farm also took recorded statements from Gumbs on October 12 and November 2, 2004.
17 Gumbs confirmed Thorne’s revised account of their activities on the morning of the loss. (Gumbs’ 2nd
18 Stmt. 16–17 (Dkt. No. 13-5 at 13).) He stated that he spent seventy percent or more of his time at the
19 Seattle house. (*Id.* at 16.) He said his SSN was xxx-xx-2515 and denied ever using another number. (*Id.*
20 at 2.) Gumbs stated that teaching at the University of Phoenix was his main job and claimed an annual
21 salary of \$10,000 to \$30,000, depending on how many classes he taught. (*Id.* at 92.) He said that he was
22 one year behind in mortgage payments on the Woodinville house, but that he had roughly \$100,000 in
23 equity in the house. (*Id.* at 90). Gumbs stated that his petition for bankruptcy had been dismissed and he
24 was in a dispute with his ex-wife over child support payments. (*Id.* at 86 & 90.)

25 State Farm continued a detailed investigation of the claim, which included: (1) a review of

1 Gumbs' October 6, 2003, Petition for Chapter 13 Bankruptcy, (2) a review of Gumbs' July 7, 2004,
2 Response to a Motion to Modify Post-Secondary Support in a dissolution matter, and (3) examinations
3 under oath of Thorne on May 2, 2005, and of Gumbs on May 4 and May 10, 2005. (*See* Mot. 5–10 (Dkt.
4 No. 12).) State Farm contends that this investigation revealed numerous misrepresentations of material
5 facts regarding the claim. (Mot. 19 (Dkt. No. 12).)

6 The parties do not dispute that Gumbs provided Robinson with an inventory list (together with
7 some receipts) for the items stolen from the residence, his social security card, voter registration card,
8 and gun permit. (*See* July 6, 2005, Letter (Dkt. No. 13-3 at 18); Gumbs Dep. 187–90 (Dkt. No. 15 at
9 13).) Gumbs asserts that he provided Robinson with a signed Proof of Loss form in February 2005, but
10 that she had misplaced it. State Farm claims that it did not receive the form, which was signed February
11 25, 2005, until May 9, 2005. (Proof of Loss (Dkt. No. 13-8 at 17).) On the form, Gumbs claimed a total
12 loss of \$20,000: \$1,000 in property damage and \$19,000 in replacement costs for stolen property.

13 On September 27, 2005, State Farm informed Gumbs and Thorne that it would not extend
14 coverage for the loss based on material misrepresentations made during the course of the investigation.
15 (Denial Letter (Dkt. No. 13-3 at 22).) Specifically, the denial letter stated that “the evidence concludes
16 that you provided false or misleading information concerning your financial condition, your activities on
17 the date of the loss and items you are claiming as stolen Additionally, there is evidence to support
18 that the loss may not have occurred or that you caused or procured the loss.” (*Id.*)

19 Plaintiffs filed the instant action on March 22, 2007, in King County Superior Court, alleging that
20 State Farm's denial of coverage breached its statutory duties, its duty of good faith, the insurance
21 contract, and the Consumer Protection Act. (Compl. (Dkt. No. 13-8 at 22–26).) Thereafter, State Farm
22 removed to this Court. (Removal (Dkt. No. 13-9 at 2).) State Farm now moves for summary judgment,
23 requesting the Court to declare that State Farm abided by its duty of good faith, complied with statutory
24 obligations, and properly denied coverage on Plaintiffs' claim. (Mot. 1 (Dkt. No. 12).)

II. ANALYSIS

A. Legal Standard

Summary judgment is proper “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). In determining whether an issue of fact exists, the Court must view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986); *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is sufficient evidence for a reasonable factfinder to find for the nonmoving party. *Anderson*, 477 U.S. at 248. The inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251–52. The moving party bears the initial burden of showing that there is no evidence which supports an element essential to the nonmovant’s claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the movant has met this burden, the nonmoving party then must show that there is a genuine issue for trial. *Anderson*, 477 U.S. at 250. If the nonmoving party fails to establish the existence of a genuine issue of material fact, “the moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323–24.

B. Breach of Contract Claim

State Farm argues that Plaintiffs’ breach of contract claim should be dismissed because their misrepresentations of material facts justified denial of coverage under the express terms of the insurance policy. (Mot. 20 (Dkt. No. 12).) The relevant policy provision upon which State Farm relied provides:

Concealment or Fraud. This policy is void as to you and any other insured, if you or any other insured under this policy has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance, whether before or after the loss.

(Policy 19 (Dkt. No. 13-2 at 16).) Plaintiffs respond that genuine issues of material fact remain regarding whether any inconsistent information provided during the claim process was intentional and material.

1 (Resp. 8 (Dkt. No. 14).)¹

2 To prevail on summary judgment on this issue, State Farm must demonstrate the absence of a
3 genuine issue of material fact regarding whether it breached the contract by denying coverage. *See* FED.
4 R. Civ. P. 56(c). The specific legal inquiry at hand determines what is a “material fact” for summary
5 judgment purposes. *Smith v. Safeco Ins. Co.*, 78 P.3d 1274, 1277 (Wash. 2003). State Farm’s denial
6 letter specifically stated that “the evidence concludes that you provided false or misleading information
7 concerning your financial condition, your activities on the date of the loss and items you are claiming as
8 stolen.”² (Denial Letter (Dkt. No. 13-3 at 22).) Consequently, State Farm must establish that no genuine
9 issue of material fact exists as to whether Plaintiffs “intentionally concealed or misrepresented any
10 material fact” relating to their (1) financial condition, (2) activities on the date of the loss, or (3) items
11 claimed as stolen. This necessarily requires a showing of falsity, intent, and materiality. *See Glamuzina v.*
12 *Glens Falls Ins. Co.*, No. C07-5011, 2008 WL 2485572, at *4 (W.D. Wash. 2008).

13 In Washington, a misrepresentation is material when it “concerns a subject ‘relevant and germane
14 to the insurer’s investigation as it was then proceeding’ at the time the inquiry was made.” *Tran v. State*
15 *Farm Fire & Cas. Co.*, 961 P.2d 358, 363 (Wash. 1998) (*quoting Fine v. Bellefonte Underwriters Ins.*
16 *Co.*, 725 F.2d 179, 183 (2d Cir. 1984)). Whether a misrepresentation is “material” is generally a mixed
17 question of law and fact, and may be decided on summary judgment only where reasonable minds could

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19 ¹ Plaintiffs also assert that State Farm must prove the tort of fraud or an “intent to deceive.”
20 (Resp. 10, 14 (Dkt. No. 14).) Plaintiffs are incorrect. Unlike cases involving misrepresentations by the
21 insured in *applying* for insurance, an insurer need not establish fraud in cases involving misrepresentations
22 by an insured in *claiming coverage* under the contract. *St. Paul Mercury Ins. Co. v. Salovich*, 705 P.2d
23 812, 814–15 (Wash. Ct. App. 1985). Here, State Farm denied coverage for alleged misrepresentations
made during Plaintiffs’ claim for coverage. Therefore, under the express terms of the policy, State Farm
need only establish that Plaintiffs’ representations were false, intentional, and material to the
investigation.

24 ²The denial letter also stated: “Additionally, there is evidence to support that the loss may not
25 have occurred or that you caused or procured the loss.” In its motion, however, State Farm does not
dispute that the loss occurred, present evidence of the absence of a loss, or otherwise argue that
Plaintiffs’ caused or procured the loss. Instead, its motion is based on Plaintiffs’ alleged
misrepresentations of facts material to their claim. (*See* Mot. 18–20 (Dkt. No. 12).)

1 not differ on the question. *Onyon v. Truck Ins. Exch.*, 859 F. Supp. 1338, 1341 (W.D. Wash. 1994).
2 State Farm alleges that Plaintiffs made numerous misrepresentations of “material facts” that justified their
3 denial of coverage. The Court will address each major contention below.³

4 State Farm places much emphasis on Thorne’s initial account of her and Gumbs’ activities on the
5 morning of the loss. There is no dispute that she initially misrepresented their whereabouts. However,
6 Thorne voluntarily corrected herself later during the *same interview* and explained why she had initially
7 failed to reveal that they returned to the Woodinville house to sleep (Thorne Stmt. 40-42 (Dkt. No. 13-4
8 at 22–25). Gumbs’ subsequent statement corroborated Thorne’s revised account of their activities that
9 morning. Thorne’s change of story goes to her credibility, which can only be weighed by the factfinder at
10 trial. Because Thorne corrected herself during the same interview, State Farm obtained a clear and
11 corroborated description of their activities on the day of the loss. Consequently, there remains a genuine
12 issue of fact as to whether this initial misrepresentation was sufficiently material to State Farm’s ongoing
13 investigation to justify denying coverage.

14 State Farm also takes issue with the discrepancy between the SSN Gumbs provided in his
15 insurance application and his actual SSN, xxx-xx-2515, provided later. In his examination under oath
16 (“EUO”), Gumbs explained that the number on the application, xxx-xx-4270, was a business
17 identification number (“BIN”), not his SSN. (Gumbs’ EUO 13 (Dkt. No. 13-8 at 5).) Gumbs stated that
18 he had owned and operated a number of businesses, including Eleven Trees Engineering Limited. (*Id.* at
19 14–17.) State Farm’s investigation found that the tax identification number for Eleven Trees Engineering
20 is 602-10-6426, which did not match the supposed BIN provided by Gumbs. (Dept. of Rev. Records
21 (Dkt. No. 13-8 at 2).) State Farm contends that Gumbs’ use of multiple SSNs affected its “ability to
22 conduct a proper financial background investigation,” but does not explain how its investigation was
23 hampered. (Reply 10 (Dkt. No. 16).)

24
25 ³The Court does not address each and every alleged misrepresentation, but rather only those with
26 evidentiary support in the record at the time State Farm denied Plaintiffs’ claim.

1 State Farm has failed to meet its burden of demonstrating that the SSN discrepancy was an
2 intentional misrepresentation material to their investigation. Gumbs also told State Farm that he operated
3 Integrated Systems, which had a different BIN from Eleven Trees. (EUO 15 (Dkt. No. 13-8 at 6).) Thus,
4 the number on the application could match the BIN number for Integrated Systems or another of Gumbs
5 businesses, and State Farm has not presented evidence to discount such a match. Regardless, because
6 Gumbs provided his actual SSN when he was first asked by the investigator, State Farm has not
7 established that the discrepancy was necessarily “material” to its continued investigation. At this summary
8 judgment stage, all reasonable inferences must be drawn in Plaintiffs’ favor. *See Sherman v. State*, 905
9 P.2d 355, 366 (Wash. 1995). A reasonable factfinder could find that the discrepancy was either
10 inadvertent or immaterial to the investigation of the claimed loss.

11 State Farm also contends that Gumbs misrepresented how much equity he had in his Woodinville
12 house. In Gumbs’ October 6, 2003, bankruptcy petition and in a July 1, 2004, letter regarding a child
13 support dispute, Gumbs indicated he had no equity in his Woodinville house. (Mot. 19 (Dkt. No. 12).)
14 But later, on October 12, 2004, Gumbs told State Farm that he had roughly \$100,00 in equity in the
15 house (Gumbs’ 2nd Stmt. 90 (Dkt. No. 13-5 at 36).) In deposition testimony, Gumbs’ explained that
16 sometime after he wrote the July 1 child support letter and before he gave the October 12 statement,
17 there was an appraisal that revealed he had more equity in the house than he had previously thought.
18 (Gumbs’ Dep. 267:10–269:8 (Dkt. No. 15 at 15).) Regardless of whether this is true, the Court may not
19 make credibility determinations or weigh the evidence in ruling on State Farm’s summary judgment
20 motion. *See Anderson*, 477 U.S. at 255. Here, a factual dispute certainly exists as to whether Gumbs
21 misrepresented the amount of equity in the Woodinville house, and therefore the Court cannot find as a
22 matter of law that Gumbs made an intentional and material misrepresentation.

23 State Farm argues that Gumbs made a material misrepresentation when he claimed that he had
24 declared the stolen tools as assets in his bankruptcy petition, when the petition indicates that he did not.
25 The alleged misrepresentation went as follows:

1 Q. Now with regards to the Chapter 13 bankruptcy, are these tools declared as part of
your assets?

2 A. Um, well, let's see . . . I can't remember . . .

Q. Hum?

3 A. Yeah, I suppose they were.

Q. Would that be a yes?

4 A. Yes.

5 (Gumbs' 2nd Stmt. 92 (Dkt. No. 13-5 at 38).) Gumbs later explained that he actually did not include all
6 his tools as assets in the petition because, after conferring with his attorney, he considered them
7 "household assets" that his son would inherit. (Gumbs' Dep. 71:5–73:9 (Dkt. No. 13-9 at 15).) Here
8 again, a factual dispute remains here as to whether Gumbs was intentionally misrepresenting a material
9 fact when he first said "I can't remember," and then answered "I suppose they were."

10 Finally, State Farm contends that Gumbs misrepresented his income and financial condition. In
11 support, it points to inconsistencies between what Gumbs claimed his income to be and the amount
12 indicated in his bankruptcy petition, child support dispute, and income tax returns. The record
13 undoubtedly raises discrepancies between Gumbs' claimed income and the income indicated on his tax
14 returns that may not be subject to easy explanation. However, questions of fact may be determined as a
15 matter of law only when reasonable minds could reach but one conclusion from them. *Sherman*, 905 P.2d
16 at 367. Here, State Farm has not shown that the financial information Gumbs' provided to it was false
17 and the information in the petition or tax returns is true. In other words, State Farm has not demonstrated
18 that Gumbs actually provided it with false information. Moreover, even if the information was false, it
19 may not have been material since Gumbs did not withhold financial records and State Farm was able to
20 obtain significant information on Gumbs' financial condition. *See Glamuzina*, at *4. The Court cannot
21 conclude as a matter of law that these discrepancies were false and material.

22 In sum, the evidence, when viewed in the light most favorable to Plaintiffs, reveals that disputed
23 material facts remain regarding (1) whether Plaintiffs' representations were in fact false, and (2) whether
24 any false representations were sufficiently material to State Farm's investigation to justify denying
25 coverage under the policy. State Farm has presented evidence of a myriad of inconsistent statements and

1 representations made by Plaintiffs throughout the course of the extended investigation. While the
2 evidence undoubtedly raises some questions and credibility issues, the Court cannot draw inferences
3 against the nonmoving party to conclude as a matter of law that Plaintiffs intentionally made false
4 representations that were material to the ongoing investigation. State Farm has failed to meet its burden
5 of demonstrating the absence of a genuine issue of material fact. Accordingly, the Court hereby DENIES
6 State Farm's motion for summary judgment on the breach of contract claim.

7 **C. BAD FAITH CLAIM**

8 State Farm argues that there is no evidence that it acted unreasonably in denying coverage, and
9 therefore Plaintiffs' bad faith claim should be dismissed. An insurer has a duty of good faith to its insured
10 and a violation of that duty may give rise to a tort action for bad faith. WASH. REV. CODE § 48.01.030.
11 To establish bad faith, a plaintiff must present evidence that the insurer's action was "unreasonable,
12 frivolous, or unfounded." *Kirk v. Mt. Airy Ins. Co.*, 951 P.2d 1124, 1126 (Wash. 1998). An insurer must
13 have a reasonable basis for denying coverage, and may be found to act in bad faith where it denies
14 coverage based upon suspicion or conjecture. *Indus. Indem. Co. v. Kallevig*, 792 P.2d 520, 526 (Wash.
15 1990). The question of whether an insurer acted in bad faith remains a question of fact. *Smith*, 78 P.3d at
16 1277. An insurer is entitled to dismissal on summary judgment "only if there is no disputed material facts
17 pertaining to the reasonableness of the insurer's conduct under the circumstances." *Id.* If the insured
18 presents evidence that "the insurer's alleged reasonable basis was not the actual basis for its action, or
19 that other factors outweighed the alleged reasonable basis," then summary judgment is not appropriate.
20 *Id.* at 1278.

21 Material facts remain in dispute regarding whether State Farm reasonably denied coverage for
22 Plaintiffs' loss. Plaintiffs have at least presented evidence that State Farm may have denied coverage
23 because it believed either that the theft did not occur or that Plaintiffs caused the loss. For example, in its
24 denial letter, State Farm explicitly stated: "Additionally, there is evidence to support that the loss may not
25 have occurred or that you caused or procured the loss." (Denial Letter (Dkt. No. 13-3 at 22).) But State

1 Farm does not argue that the loss did not occur or otherwise present evidence that Plaintiffs caused the
2 loss. Because sufficient issues of material fact remain as to the reasonableness of State Farm's denial of
3 coverage, summary judgment on this claim is not appropriate.

4 **D. CONSUMER PROTECTION ACT CLAIM**

5 The Washington Consumer Protection Act ("CPA") prohibits unfair or deceptive acts or practices
6 in the conduct of any trade or business. WASH. REV. CODE § 19.86.010 *et seq.* Insurers are specifically
7 prohibited from engaging in unfair or deceptive practices, including those defined in regulations
8 promulgated by the insurance commissioner. WASH. REV. CODE § 48.30.010(1). Pursuant to its statutory
9 authority, the commissioner promulgated regulations defining unfair or deceptive practices in the business
10 of insurance. *See* WASH. ADMIN. CODE § 284-30-300 *et seq.* An insured can establish a *per se* unfair
11 trade practice under the CPA by demonstrating a single violation of these insurance regulations. *Indus.*
12 *Indem.*, 792 P.2d at 530.

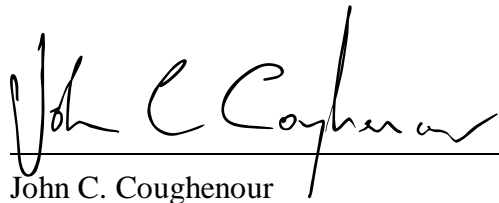
13 Plaintiffs allege that State Farm violated the insurance regulations by failing to certify the policy,
14 and failing to accept or deny Plaintiffs' claim within fifteen days of receiving the proof of loss. (Resp.
15 17-18 (Dkt. No. 14).) State Farm concedes that it did not issue the denial letter within fifteen days of
16 receipt of the proof of loss form, but contends that it acted reasonably under the circumstances. (Reply 12
17 (Dkt. No. 16).) It also asserts that its failure to certify the policy because it was considered void did not
18 misrepresent the terms of the policy. (*Id.*)

19 State Farm has not met its burden of demonstrating the absence of a material fact as to whether it
20 violated the insurance regulations. Because State Farm concedes that it failed to issue the denial letter
21 within the time required by the regulations, and a single violation could be a violation of the CPA,
22 sufficient issues of fact remain in dispute to foreclose dismissal of the CPA claim on summary judgment.
23 Therefore, the Court cannot conclude, as a matter of law, that State Farm did not violate any of the
24 insurance regulations.
25

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court hereby DENIES Defendant's motion for summary judgment.

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4 SO ORDERED this 2nd day of October, 2008.

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John C. Coughenour

9 UNITED STATES DISTRICT JUDGE